

ORIGINAL

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DISTRICT COURT OF GUAM
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MARY L.M. MORAN
CLERK OF COURT

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2 LEONARDO M. RAPADAS
United States Attorney
3 RUSSELL C. STODDARD
First Assistant U.S. Attorney
4 Sirena Plaza Suite 500
108 Hernan Cortez Avenue
5 Hagatna, Guam 96910
Telephone: (671) 472-7332
6 Telecopier: (671) 472-7334

7 Attorneys for the United States of America

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF GUAM**

10 UNITED STATES OF AMERICA,)
11)
Plaintiff,)
12)
vs.)
13)
CHRISTOPHER M. ESPINOSA,)
14 and BRIAN WILLIAM ELM,)
15 Defendants.)
16 _____

CRIMINAL CASE NO. 05-00053

**GOVERNMENT'S RESPONSE TO
DEFENDANT ELM'S MOTION
FOR SEVERANCE**

17 COMES NOW the United States, by and through its First Assistant United States
18 Attorney, and in filing this response to Defendant Brian William Elm's Motion for Severance,
19 states as follows:

20 **STATEMENT OF FACTS**

21 The government expects the testimony at trial to be that in approximately July, 2004, co-
22 conspirator Jonathan Canovas traveled from Las Vegas, Nevada to his parent's home in Guam.
23 At the time, Canovas was selling methamphetamine hydrochloride (methamphetamine) to
24 various individuals, including persons on Guam.

25 To deliver the drugs from Las Vegas to his contacts in Guam, Canovas would put the
26 methamphetamine in greeting cards and then mail the cards to the purchasers.

1 While visiting his parents in Guam, Canovas attended a barbeque at the home of Erik
2 Aponik. During the barbeque, Canovas was approached by one of the other guests at the
3 barbeque, Brian Elm. Elm, apparently aware of Canovas' drug dealing activity, asked Canovas if
4 he could begin providing methamphetamine to him. Canovas agreed.

5 Sometime after he returned to Las Vegas, Canovas began sending methamphetamine to
6 Elm using the same methods as previously described. Canovas' partner in the enterprise and the
7 person responsible for securing the methamphetamine, was Christopher Espinosa.

8 Once Elm received the methamphetamine, he would distribute the drugs to other
9 individuals in Guam. Elm enlisted Erik Aponik to take the drug proceeds and deposit them into
10 a bank account Canovas maintained at the Bank of Guam. Canovas would take the drug
11 proceeds and share them with Christopher Espinosa, who, in turn, would use them to acquire
12 more methamphetamine to send to Brian Elm.

13 This relationship continued for several months. Espinosa and Canovas would acquire
14 methamphetamine, in ever increasing amounts, and mail the drugs to Elm. Elm would distribute
15 the drugs and give the proceeds to Aponik. Aponik would deposit the funds into Canovas' bank
16 account and Canovas and Espinosa would then use these funds to get more drugs. As the drug
17 quantities increased, boxes containing the drugs and other items were substituted for the greeting
18 cards.

19 In or about March, 2005, Brian Elm was arrested on unrelated federal firearms charges.
20 Sensing his impending incarceration, Elm "introduced" Aponik to Canovas via cell phone to
21 keep the drug and money laundering conspiracies from ending. Elm instructed Aponik as to the
22 manner and means used by the conspirators to get the drugs from Las Vegas to Guam. Shortly
23 thereafter, Aponik began receiving the mailed drugs from Canovas and Espinosa.

24 Sometime in April, 2005, Espinosa and Canovas had a falling out. Espinosa called
25 Aponik and told him that, henceforth, Aponik would be dealing directly with Espinosa. When
26 Aponik received the drugs from Espinosa he would distribute them and give the proceeds to
27

1 Espinosa using Western Union transfers and other methods to get the proceeds from Guam to Las
2 Vegas. Such was the nature of the conspiracies when law enforcement intercepted one of the
3 packages in June 2005 and arrested the participants.

4 **MEMORANDUM OF LAW**

5 In order to obtain a severance from a joined defendant, the movant must demonstrate
6 “clear,” “manifest,” or “undue” prejudice from a joint trial. United States v. McDonald, 576 F.2d
7 1350, 1355 (9th Cir.), cert. denied 439 U.S. 830 (1978). Elm has failed to meet this burden.

8 Generally, and especially in conspiracy cases, persons jointly indicted should be tried
9 together. Zafiro v. United States, 506 U.S. 534 (1993). Judicial economy supports joint trials for
10 promoting efficiency and serving “the interests of justice by avoiding the scandal and inequity of
11 inconsistent verdicts.” Richardson v. Marsh, 481 U.S. 200, 209 (1987). When properly joined
12 under Fed. R. Crim. P. 8, defendants should be granted a severance only if there is a serious risk
13 that a joint trial would prejudice a specific trial right of one of the defendants or prevent the jury
14 from making a reliable judgment about the guilt or innocence of the accused. Zafiro, 506 U.S. at
15 539.

16 There is no risk of prejudice of a specific trial right by joinder in this case. Furthermore,
17 there is nothing about the facts that would prevent a jury from making a reliable judgment about
18 either accused’s guilt or innocence. The government has charged two conspiracies; drug
19 distribution and money laundering. The defendants were both members of the same conspiracies
20 from their inception. As often happens in multiple defendant conspiracies, overt acts occurred
21 in several jurisdictions. The defendants were both aware of the activities occurring in these
22 jurisdictions and participated in them. One remaining defendant, Elm, became an inactive
23 participant as a result of being arrested on other charges. Before his incarceration, however, Elm
24 took manifest actions to ensure that the enterprise continued, which it did. As a result, the
25 subsequent activities undertaken by the co-conspirators are imputed to Elm and are considered
26 foreseeable by him. See, Pinkerton v. United States, 328 U.S. 640, 647-48 (1946).

1 The indictment also contains separate substantive offenses charged against each
2 defendant. There is nothing inherently prejudicial about this. Juries are frequently asked to
3 consider specific evidence as to specific defendants in multiple defendant trials, and the jury
4 instructions mandate that the jurors do so. See, Ninth Circuit Model Jury Instruction 3.14.

5 **CONCLUSION**

6 The defendants are properly joined for trial as a result of their participation in a scheme to
7 ship methamphetamine hydrochloride from Las Vegas, Nevada to Guam and to ship the proceeds
8 from the distribution of these drugs from Guam to Nevada. There is no prejudice to the
9 defendants as a result of the joinder. Accordingly, the Motion For Severance is due to be denied.

10 RESPECTFULLY SUBMITTED this 16th day of March, 2006.

11
12 LEONARDO M. RAPADAS
13 United States Attorney
14 Districts of Guam and CNMI

15 By: 

16 RUSSELL C. STODDARD
17 First Assistant U.S. Attorney
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